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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XV179]**

**Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee**

**Implementation Group Draft Restoration Plan/Environmental Assessment #5:**

**Living Coastal and Marine Resources - Marine Mammals and Oysters**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and a Consent Decree with BP Exploration & Production Inc. (BP),<sup>1</sup> the *Deepwater Horizon* Federal natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared a Draft Restoration Plan/Environmental Assessment (RP/EA #5): Living Coastal and Marine Resources - Marine Mammals and Oysters. The Draft RP/EA #5 proposes restoration project alternatives considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. The Louisiana TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment regulations, and also evaluated the environmental consequences of the restoration alternatives in accordance with NEPA. The purpose of

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<sup>1</sup> Consent Decree among Defendant BP Exploration & Production Inc. ("BPXP"), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas entered in *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 in the United States District Court for the Eastern District of Louisiana.

this notice is to inform the public of the availability of the Draft RP/EA #5 and to seek public comments on the document.

**DATES:** The Louisiana TIG will consider public comments received on or before *[insert date 30 days after date of publication in the Federal Register]*.

*Public Webinar:* The Louisiana TIG will conduct a public webinar on April 8, 2020 at 4:00pm Central. The public may register for the webinar at <https://attendee.gotowebinar.com/register/4511405465865527821>. After registering, participants will receive a confirmation email with instructions for joining the public webinar. The webinar will include a presentation of the Draft RP/EA #5 and opportunity for public comment. The presentation slides will be posted on the web shortly after the public meeting is completed. Comments will also be taken through submission online or through U.S. mail (see *Submitting Comments* below).

**ADDRESSES:** *Obtaining Documents:* You may download the Draft RP/EA at: <http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>. Alternatively, you may request a CD of the Draft RP/EA #5 (see **FOR FURTHER INFORMATION CONTACT** below). Also, you may view the document at any of the public facilities listed in Appendix A of the Draft RP/EA #5.

*Submitting Comments:* You may submit comments on the Draft RP/EA #5 by one of the following methods:

- *Via the Web:* <http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>;

- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. Please note that mailed comments must be postmarked on or before the comment deadline given in DATES;
- *During the public webinar:* Comments may be provided in writing online during the webinar. Webinar information is provided above in **DATES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** National Oceanic and Atmospheric Administration – Mel Landry, NOAA Restoration Center, 225-425-0583, *mel.landry@noaa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Introduction**

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well

over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Deepwater Horizon Federal and State natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under OPA (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);

- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are now selected and implemented by the Louisiana TIG. The Louisiana TIG is composed of the following Federal Trustees: NOAA; DOI; EPA; and USDA.

## **Background**

The Draft RP/EA #5 is being released in accordance with OPA NRDA regulations in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA (42 U.S.C. 4321 *et seq.*), the Consent Decree, and the Final PDARP/PEIS, which provided for an overall goal of "Replenish and Protect Living Coastal Marine Resources." This restoration planning activity is proceeding in accordance with the PDARP/PEIS, which provided for various types of restoration, including restoration of marine mammals and oysters.

Information on the Restoration Types being considered in the Draft RP/EA #5, as well as the OPA criteria against which project ideas are being evaluated, can be viewed in the PDARP/PEIS (<http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>) and in the Overview of the PDARP/PEIS (<http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>).

For the Draft RP/EA #5, the Louisiana TIG assembled a list of 193 project alternatives for the restoration of marine mammals and 36 project alternatives for the restoration of oysters. These alternatives were based on proposals from the public as well as agencies, including projects submitted to the DWH Trustee or Louisiana TIG portals and projects submitted by individual state and Federal Trustees, including projects submitted on behalf of non-Trustee agencies. All alternatives underwent a step-wise screening process based on criteria established by OPA and the Louisiana TIG, whereby projects that did not meet the criteria were eliminated, and duplicative alternatives were combined. This resulted in two action alternatives for marine mammals and four action alternatives for oysters, each of which are evaluated in the Draft RP/EA #5. Alternatives that meet the criteria but are not carried forward as preferred alternatives may be considered in future restoration plans.

### **Overview of the Louisiana TIG Draft RP/EA #5**

The Draft RP/EA considers two action alternatives for restoration of marine mammals. The preferred alternative is entitled, “Increasing Capacity and Expanding Partnerships along the Louisiana Coastline for Marine Mammal Stranding Response.” This project would enable rapid response to injured and dead cetaceans in the state and better understand the causes of mortality and morbidity by hiring a Louisiana-based

Stranding Coordinator that will build partnerships and conduct outreach; and by providing infrastructure, equipment, and supplies needed to facilitate stranding response and improve rehabilitation capabilities. The project should increase the number of stranding reports and improve their quality as a result of timelier responses. The project would have a 5-year project life and a cost of \$3,955,620.

The non-preferred alternative for marine mammal restoration is entitled, “Region-wide Marine Mammal Conservation Medicine and Health Program.” This project would improve understanding of Louisiana-specific risks for illness and death among cetaceans, and assess and implement future health intervention techniques by establishing a working group; providing regular training sessions and workshops for the stranding network and researchers; and developing and implementing a study plan for live capture and release health assessments of free-ranging cetaceans. The project would have a 5-year project life and a cost of \$6,334,000.

The Draft RP/EA #5 considers four action alternatives for restoration of oysters, including three preferred alternatives. The first is entitled, “Enhancing Oyster Recovery Using Brood Reefs.” A network of spawning stock oyster reefs would be constructed in two phases: (1) two reefs would be constructed in the Lake Machais/Mozambique Point area along with two reefs in the Petit Pass/Bay Boudreaux area. Each reef would be 10 acres in size and 1.2 m from bottom; and (2) up to 20 reefs would be constructed in Chandeleur Sound, with each reef 0.5 acres in size and 0.5-1.2 m from bottom. All constructed reefs would be closed to harvest but located near harvesting areas to promote connectivity. The project would have a 2-year construction period, followed by 4 years of monitoring, with a project cost of \$9,701,447.

The second preferred alternative for oyster restoration is entitled, “Cultch Plant Oyster Restoration Projects.” This project would create oyster reefs at various sites through placement of limestone at a planting density of up to 200 tons per acre with harvest closed until certain performance criteria are met. There would be a 200-acre site at Public Oyster Seed Ground (POSG) in the Grand Banks area of Mississippi Sound; a 200-acre site at Caillou Lake Public Oyster Seed Reservation (POSR) in Terrebonne Parish; and up to 400 acres of clean limestone cultch material would be constructed at each of four historic reefs within POSGs in the Biloxi Marsh Complex in St. Bernard Parish: Drum Bay, Three Mile Bay, Karako Bay, and Morgan Harbor. Oyster reefs could be constructed at other POSGs or POSRs in the future. The project would have a 2-year construction period, followed by 4 years of monitoring, with a project cost of \$10,070,000.

The third preferred alternative for oyster restoration is entitled, “Hatchery-based Oyster Restoration Projects.” This project would provide \$5,850,000 in funding over ten years to support continued operations at the Michael C. Voisin Oyster Hatchery in Grand Isle, Louisiana with spat-on-shell deployment of hatchery-produced oysters deployment onto existing shell substrate in POSGs or POSRs that are low-producing or in need of rehabilitation. The hatchery estimates production of at least 500 million diploid oyster larvae per year, of which a minimum of 25 percent would be dedicated for use in oyster restoration activities within areas protected from harvest.

An additional action alternative for oyster restoration, entitled “Caillou Lake Artificial Reef,” was also evaluated. This project would provide for construction of approximately 21 miles of eight to ten-foot artificial oyster reef (using gabions with



limestone or shell) along the shorelines of Caillou Lake most susceptible to erosion in order to replenish oysters and armor the shoreline. The project would involve three phases: (1) construct approximately seven miles of reef along the northern end of the central island in the land bridge; (2) construct another seven miles consisting of two, two-mile sections to the east and west of the Phase I reef and three miles along the southern shoreline of the central island in the land bridge; (3) construct approximately five miles of reef to the west of the southern, three-mile section of Phase II, and another two miles of reef to the east. Intermittent breaks between reef segments would be constructed to allow for movement of aquatic species between the marine habitat, shoreline, and freshwater spawning and rearing habitats, and to prevent entrapment. The project would involve a 2.5-year construction period, followed by 4 years of monitoring, with a project cost of \$23,595,000.

The funding proposed for implementation of oyster restoration under the trustees' proposed preferred alternative represents a commitment of all remaining available funding for oyster restoration in the Louisiana Restoration Area. The programmatic structure of the proposed oyster cultch and brood reef projects would allow the trustees to continue to construct specific reef sites in the future. In alignment with the PDARP, the trustees may propose projects in the future that benefit oysters through the wetlands, coastal, and nearshore habitats restoration allocation.

For both marine mammal restoration and oysters, the Draft RP/EA #5 evaluates a No Action Alternative, under which no project would be constructed and no additional costs would be incurred at this time.

The Louisiana TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In Draft RP/EA #5, the Louisiana TIG presents to the public its draft plan for providing partial compensation to the public for injured natural resources and ecological services in the Louisiana Restoration Area. The proposed action is intended to continue the process of using DWH restoration funding to restore natural resources injured or lost as a result of the *Deepwater Horizon* oil spill. Additional restoration planning for the Louisiana Restoration Area will continue.

### **Next Steps**

The public is encouraged to review and comment on the Draft RP/EA #5. A public webinar to facilitate the public review and comment process, is scheduled for April 8, 2020. After the public comment period ends, the Louisiana TIG will consider and address comments received before issuing a Final RP/EA #5. A summary of comments received and the Louisiana TIG's responses and any revisions to the document, as appropriate, will be included in the final document.

### **Administrative Record**

The documents comprising the Administrative Record for the Draft RP/EA #5 can be viewed electronically at <http://www.doi.gov/deepwaterhorizon/adminrecord>.

### **Authority**

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: March 13, 2020.

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Carrie Selberg,

Director,

Office of Habitat Conservation,

National Marine Fisheries Service.

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